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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/677,040	09/29/2000	Seth Bradley Noble	BA-00464	1692
7590	01/21/2004			
Robert B O'Rourke Blakely Sokoloff Taylor & Zafman LLP 12400 Wilshire Boulevard Seventh Floor Los Angeles, CA 90025-1026			EXAMINER NGUYEN, BRIAN D	
			ART UNIT	PAPER NUMBER
			2661	

DATE MAILED: 01/21/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/677,040

Applicant(s)

NOBLE, SETH BRADLEY

Examiner

Brian D Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on the application filed 9/29/00.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-23 and 25 is/are allowed.
- 6) ☒ Claim(s) 1-15, 24, 26-35 and 38-51 is/are rejected.
- 7) ☒ Claim(s) 36, 37 and 52-57 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claims 3-5, 26-29, 36-45, and 52-57 are objected to because of the following informalities:

Claim 3, line 3, because the word "size" has not been previously mentioned, it is suggested to change "said earliest portion size" to ---the size of the earliest portion---.

Claims 26 and 42, it is suggested to delete "*".

Claim 36, "said 3) characteristic" should change to ---said characteristic 3)---.

Claim 52, "said 3) characteristic" should change to ---said characteristic 3)---.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 6, 9-10, 24, 30-41, and 46-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "said network" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation "said client" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "said client" in line 2. There is insufficient antecedent basis for this limitation in the claim.

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Claim 24 recites the limitation "said declaration" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 30 recites the limitation "said various portions" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 34 recites the limitation "said another timer" in line 4. There is insufficient antecedent basis for this limitation in the claim. Claim 34 seems to be dependent on claim 33 as claim 50 depends on claim 49. The Examiner assumes claim 34 depends on claim 33 for this Office action.

Claim 35, "ignoring a second reception of said specific portion at said client" is unclear because there is no first reception. Claim 35 seems to be dependent on claim 33 as claim 51 depends on claim 49. The Examiner assumes claim 35 depends on claim 33 for this Office action.

Claim 38 recites the limitation "said characteristic 3b)" in line 2. There is insufficient antecedent basis for this limitation in the claim. Claim 38 seems to be dependent on claim 37 as claim 54 depends on claim 53. The Examiner assumes claim 38 depends on claim 37 for this Office action.

Claim 39 recites the limitation "characteristic 3a)" in line 4. There is insufficient antecedent basis for this limitation in the claim. Claim 39 seems to be dependent on claim 38 as claim 55 depends on claim 54. The Examiner assumes claim 39 depends on claim 38 for this Office action.

Claim 40 recites the limitation "said reducing" in line 1 and "said specific portion" in line 2. There is insufficient antecedent basis for this limitation in the claim. Claim 40 seems to be

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dependent on claim 39 as claim 56 depends on claim 55. The Examiner assumes claim 40 depends on claim 39 for this Office action.

Claim 41 recites the limitation "said specific portion" and "said characteristic 3a)" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. Claim 41 seems to be dependent on claim 39 as claim 57 depends on claim 55. The Examiner assumes claim 41 depends on claim 39 for this Office action.

Claim 46 recites the limitation "said various portions" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim 51, "ignoring a second reception of said specific portion at said client" is unclear because there is no first reception.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the

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reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-2, 6-13, 26-27, 29-35, 42-43, and 45-51 are rejected under 35 U.S.C. 102(e) as being anticipated by Sridhar et al (6,324,582).

Regarding claim 1, Sridhar et al discloses a method comprising limiting data flow between two network nodes (client and server) to an amount within a window where a first portion of data within a first segment of the window is separated from a second portion of data within a second segment of the window by a third portion of data not within the window (see figures 3 & 7 where in figure 3, D6-D9 are retransmitted while in figure 7 only D62 is retransmitted; col. 12, lines 6-39).

Regarding claim 2, Sridhar et al discloses sliding the second segment of the window forward upon reception of an earliest portion of the second portion of data (see figures 3 & 7 where sliding window size is four).

Regarding claim 6, Sridhar et al discloses sending a request message over the network for a fourth portion of data, the fourth portion of data within the second segment of the window (see figures 3 & 7).

Regarding claim 7-8, Sridhar et al discloses sliding the first segment of the window forward and adjacent to the second window segment to form a contiguous window upon reception of the first portion of data and sliding the contiguous window forward upon reception of an earliest portion of data within the contiguous window (see sliding window in figures 3 & 4 including contiguous and non-contiguous windows).

Regarding claims 9-10, Sridhar et al discloses client and server (see figures 3 & 7).

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Regarding claims 11-13, Sridhar et al discloses data lost and request message (see col. 12, lines 22-25).

Regarding claims 26-27, Sridhar et al discloses a method, comprising: sending a message onto a network from a client to a server that requests a portion of an amount of data from the server (see figure 7) wherein the total amount of the amount of data that is requested by the client from the server through one or more messages and not received by the client is within a limit that controls how much of the amount of data is in transit on the network, the limit being maintained by the client and starting a timer (time-out period) at the client that times how long it takes for any piece of the portion to be received at the client; and sending a second message from the client to the server for another portion of the amount of data, the sending a second message in response to a reception of at least a piece of the portion, the reception occurring no later than an expiration of the timer, wherein the another portion is the same size as the at least a piece of the portion (see col. 12, lines 6-50).

Regarding claim 29, Sridhar et al discloses the client tracks various portions of the amount of data over the course of a transaction in which the amount of data is eventually transported from the server to the client, the various portions being tracked according to the following set of characteristics: those one or more portions that have been received from the server before the expiration of its timer, those one or more portions for whom a requesting message has been sent onto the network from the client to the server and whose timer has not yet expired, those one or more portions that are neither characteristic 1) or characteristic 2) (see figure 7 and col. 11, line 54-col. 12, line 39).

Regarding claims 30, Sridhar et al discloses a method comprising tracking portions of an amount of data communicating between a client and a server comprising characteristics: those one or more portions that have been received from the server before the expiration of its timer. 2) those one or more portions for whom a requesting message has been sent onto the network from the client to the server and whose timer has not yet expired. 3) those one or more portions that are neither characteristic 1) or characteristic 2) wherein when the amount of data is viewed as being contiguous, such that a next piece of the amount of data is adjacent to a piece of the amount of data from the perspective of the piece of the amount of data, a first portion having characteristic 1) is between a second and third portions having characteristic 2) (see figure 7 and col. 11, line 54-col. 12, line 39).

Regarding claims 31-35, Sridhar et al discloses re-characterize based on a timer and submit a request for retransmitting the lost data (see figure 7 and col. 11, line 54-col. 12, line 39).

Regarding claims 42, 43, and 45, claims 42, 43, and 45 are machine-readable medium claims that have substantially all the limitations of the respective method claims 26, 27, and 29. Therefore, they are subject to the same rejection.

Regarding claims 46-51, claims 46-51 are machine-readable medium claims that have substantially all the limitations of the respective method claims 30-35. Therefore, they are subject to the same rejection.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3-5, 28, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sridhar et al (6,324,582).

Regarding claims 3-5, Sridhar et al does not specifically disclose the second segment slides forward an amount equal to a minimum of the earliest portion size, a client burst limit, and a server burst limit. However, it is obvious that the sliding amount cannot exceed the server and client burst limitations and the "in transmit" can not exceed the window size. Therefore, the second segment slides forward an amount equal to a minimum a mount of the earliest portion size, a client and a server burst limits.

Regarding claims 28, Sridhar et al does not specifically discloses the size of the another portion is the minimum of the size of the at least a piece of the portion, the limit minus an amount of the data that is characterized as being "in transit" on the network, a second limit that sets a limit on the maximum amount of data that may be requested by the client in the second message, a third limit that sets a limit on the maximum amount of the data that may be sent by the server to the client as a result of the server's reception of the second message. However, it is obvious that the other portion cannot exceed the burst limitations of both client and server, the window size or the in-transit limitation. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the minimum of the limitations to set the size for the other portion in order to control the transmission between network elements and to minimize network collision.

Regarding claim 44, claim 44 is a machine-readable medium claim that has substantially all the limitations of the respective method claim 28. Therefore, they are subject to the same rejection.

8. Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sridhar et al (6,324,582) in view of Packer et al (6,205,120).

Regarding claims 14-15, Sridhar et al does not specifically disclose reduce or increase window size. However, Packer discloses that window size can increase or decrease (see col. 3, lines 7-12 and lines 51-60). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to adjust the window size as taught by Packer in the system of Sridhar et al so that the network resources can be effectively used and to minimize network congestion.

Allowable Subject Matter

9. Claims 16-23 and 25 are allowed.

10. Claims 24, 36-41 and 52-57 would be allowable if rewritten to overcome the objection(s) and/or the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Bellaton et al (6,473,425), mechanism for dispatching packets via a telecommunication network.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian D Nguyen whose telephone number is (703) 305-5133.

The examiner can normally be reached on 7:30-6:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Olms can be reached on (703) 305-4703. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0377.



Brian Nguyen
Art Unit 2661
1/16/04